

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17349-CC

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JORGE HERNANDEZ,
a.k.a. Trolo,
a.k.a. Cuba,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

Before WILLIAM PRYOR, Chief Judge, and WILSON and ANDERSON, Circuit Judges.

ORDER:

Appellant's motion to recall the mandate based on *United States v. Dupree*, 57 F.4th 1269 (11th Cir. 2023) is DENIED.

APPENDIX B

In the
United States Court of Appeals
For the Eleventh Circuit

No. 16-17349

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE HERNANDEZ,
a.k.a. Trolo,
a.k.a. Cuba,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:16-cr-20109-FAM-1

2

Order of the Court

16-17349

Before WILLIAM PRYOR, Chief Judge, and WILSON and ANDERSON,

Circuit Judges.

BY THE COURT:

Appellant's motion for reconsideration of this Court's April 27, 2023 order, as construed from his "Petition for Panel Rehearing," is DENIED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,
APPELLEE,
- VERSUS -
JORGE HERNANDEZ,
APPELLANT.

MOTION TO RECALL THE MANDATE

Jorge Hernandez respectfully requests that this court recall its mandate in this criminal appeal in order to correct its demonstrably wrong decision. The panel had originally rendered its judgment in this appeal without the benefit of this en banc court's recent ruling in United States v. Dupree, No. 19-13776 (11th Cir. Jan. 18, 2023) (en banc). This resulted in the panel affirming Hernandez's improper designation as a career offender by relying on prior inchoate (conspiracy) offenses that do not qualify per the plain text of U.S.S.G. §4B1.2(b).

Hernandez's original appellate argument against this inapplicable sentencing guidelines enhancement has been finally vindicated. The decision in this appeal has been shown by the Dupree court to always have been wrong.

This court has the power to correct this injustice. Hernandez respectfully requests it do so here by recalling its mandate and enter an appropriate revised opinion and judgment.

I. Good Cause for Delay

At the threshold, the mandate issued in this appeal in 2018. As such,

Hernandez must state "with specificity why it was not filed sooner." 11th Cir. R. 41-1(b). Further, "[t]he court will not grant the motion unless the movant has established good cause for the delay in filing the motion." Id.

Until very recently, this court had been bound by the erroneously decided prior precedent ruling that inchoate controlled substance offenses qualified for career offender purposes. See Dupree, No. 19-13776, Doc. 74-1 at 22 n.9 (explaining that the previous conclusion that §4B1.2(b) and Application Note 1 commentary were compatible "was incorrect at the time.") United States v. Weir, 51 F.3d 690 (11th Cir. 1995). The court's decision in Dupree changed this, and only now may Hernandez proceed with this motion challenging the panel's prior "incorrect" determination.

II. Relevant Background

On Feb. 10, 2016, Hernandez was arrested pursuant to a five count indictment charging him with various drug distribution crimes. On September 5, 2016, Hernandez pleaded guilty to a lesser included offense of count 5, possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §841(b)(1).

Hernandez was found by the probation office to be a career offender, as he had three prior controlled substance convictions involving conspiracy with intent to distribute cocaine and an attempted murder charge. PSR ¶42. The probation office further found that because of the aggregate drug weight in the instant offense resulted in a guidelines level higher than the §4B1.1 guideline (level 36), the drug weight controlled the offense level. After receiving acceptance of responsibility, Hernandez was found to be at a guideline level of 33 (id. at ¶45) with 8 criminal history points (id. at ¶53). The career offender enhancement increased Hernandez to Category VI, or 235-293

months. *Id.* On November 11, 2016, Hernandez proceeded to sentencing. After he had successfully argued that the methamphetamine guidelines were not representative of his conduct, the district court granted a downward variance from the low end of the guidelines to 210 months imprisonment. Doc. 213 at 15. Hernandez appealed. Doc. 195.

On appeal, Hernandez argued among other things that he was incorrectly designated as a career offender. See *Ini. Brf.* at 22 ("Appellant was incorrectly designated as a career offender pursuant to §4B1.1(A) [sic] as his three prior felony convictions for controlled substances are ineligible to meet the criteria for career offender designation."). Hernandez further argued that his three controlled substance offenses had to be considered a single conviction for career offender purposes. *Id.* at 24.

The government filed a response brief arguing that there was no authority supporting Hernandez's position that the controlled substances offenses were not career offender predicates. *Gov. Brf.* at 41. Hernandez did not reply. In the appellate panel's written opinion, it agreed with Hernandez that his "three felony controlled substance convictions should all have counted as one offense for the career offender enhancement ..." *Opn.* at 9. The panel, however also wrongly found that the single conspiracy to possess with intent to distribute cocaine offense was a qualifying career offender predicate. *Id.* at 10. Indeed, in contravention to the guidance of Stinson v. United States, 508 U.S. 36 (1993), the panel specifically cited the §4B1.2 Application Note 1 commentary as part of its reasoning affirming the career offender designation. *Id.* at 8.

Last month, the appellate court en banc decided Dupree. The Dupree court specifically found that §4B1.2(b)'s definition of a controlled substance offense clearly "does not include inchoate offenses." Dupree, No. 19-13776,

Doc. 74-1 at 3. The Dupree court also concluded that "we have no need to consider, much less defer to, the commentary in [§4B1.2's] Application Note 1," overruling prior precedent. Id. at 22 & n. 9. The Dupree court essentially found that §4B1.2 unambiguously excluded inchoate offenses like conspiracy, that the Application Note 1 commentary including these offenses were incompatible with the guideline, and this was also so under Stinson. Id.

III. Standards

"A mandate once issued shall not be recalled except to prevent injustice." 11th Cir. §. 41-1(b). This local appellate rule is applicable only to civil and criminal appeals. See Jones v. GDCP Warden, 815 F.3d 689, 698 (11th Cir. 2016) ("Eleventh Circuit Rule 41-1 is the general rule governing the recall of a mandate in civil and criminal cases alike"). This is distinguished from recalling a mandate in habeas cases as contemplated in Calderon v. Thompson, 523 U.S. 538 (1998). See Jones, 815 F.3d at 698 (discussing how Rule 41-1(b) has no application to habeas cases post-Calderon). Hernandez's current motion concerns purely his direct criminal appeal and an issue and claim decided therein.

Injustice, while not explicitly defined in this circuit, is most often contemplated as "manifest injustice." This circuit's "case law equates manifest injustice with the plain error standard of review," such that "[t]o demonstrate manifest injustice, a petitioner must demonstrate (1) that there was error; (2) that was plain; (3) that affected [] substantial rights; and (4) that affected the fundamental fairness of the proceedings." United States v. Quintana, 300 F.3d 1227, 1232 (11th Cir. 2002).

In order to show that an error affected one's substantial rights, the defendant must show that there is a reasonable probability of a different

result in the outcome of the case. United States v. Rodriguez, 398 F.3d 1291, 1299 (11th Cir. 2005). As well, there can be no plain error where there is no precedent from this court directly resolving it. United States v. Lejardo-Rada, 391 F.3d 1288, 1291 (11th Cir. 2003).

Essentially, in order to prevail in recalling a mandate, Hernandez must demonstrate that because of an intervening event the appellate court's existing judgment in the criminal appeal is plainly erroneous. See, e.g., United States v. Emery, 794 F.3d 526, 530 (5th Cir. 2015) (recalling mandate for appellate court's plain error). This includes situations where the judgment is now "demonstrably wrong;" it "directly conflicts with" a subsequent decision. United States v. Tolliver, 116 F.3d 120, 123 (5th Cir. 1997); see, e.g., Greater Boston Television Corp v. FCC, 463 F.2d 268, 278 N. 12 (D.C. Cir. 1971); cf. Lindsey v. Thigpen, 875 F.2d 1509, 1513 (11th Cir. 1989) (applying the "demonstrably wrong" standard). And that decision had an affect on the outcome of the appeal. Id. at 1514.

Finally, injustice must be balanced with an interest in maintaining finality in a case, although there is a public interest in correcting an erroneous sentence, which "may counsel a more generous recall rule in criminal cases[.]" 16 Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure §3938, p. 880 (3d Ed. 2012) ("16 Wright and Miller").

IV. Argument

"Courts exist not merely to decide cases, but to decide them correctly."
United States v. Davila, 890 F.3d 583, 587 (5th Cir. 2018) (citing W. Virginia Oil & Gas Co. v. George E. Breece Lumber Co., 213 F.2d 702, 704 (5th Cir. 1954)). The panel's original decision in Hernandez's appeal affirming the career offender designation was always incorrect. If the panel had the benefit of

Dupree's ruling, Hernandez's erroneously enhanced sentence would have been overturned on appeal.

1. Existing Order is Wrongly Decided

One of Hernandez's original claims on appeal was that his prior controlled substance offenses for conspiracy did not count for qualifying him as a career offender. Ini. Brf. at 22. Under Dupree's explication, Hernandez was right. The panel's order was demonstrably wrong.

The order in Hernandez's case was premised on guidelines commentary that should not have been considered, as this commentary improperly expanded upon the clearly proscribed conduct to add inchoate offenses. Compare Opn. at 8 with Dupree, No. 19-13776, Doc. 74-1 at 21 n. 9. As explained in great detail in Dupree, deference to the commentary's expansion is not permitted absent ambiguity in §4B1.2(b), which is not present. The §4B1.2(b) guideline simply (and clearly) does not include inchoate offenses.

As also illuminated by the Dupree court, the panel's decision in Hernandez's case was always wrong. Id. Per Stinson v. United States, 508 U.S. 36 (1993), and the plain text of the §4B1.2(b) guideline, the panel's analysis in Hernandez's case should have disregarded the commentary and the conspiracy offenses, finding that there was only one qualifying predicate offense; not enough for a career offender enhancement.

Had this court had the precedent-overruling order of Dupree, Hernandez's sentence would need to be vacated, and he would be remanded with instructions to be sentenced without the career offender enhancement.

Hernandez's appellate order affirming the career offender designation is now "demonstrably wrong," in direct conflict with current precedent by directly

overriding it. This not only calls into question the panel's original judgment, it outright contradicts it. See Sargent v. Columbia Forest Prods., Inc., 75 F.3d 86, 90 (2d Cir. 1996).

2. Hernandez Meets the Injustice (Plain error) Standard

It cannot be overstated that this current motion concerns only the validity of the judgment in a criminal appeal regarding an issue raised in the appeal. As such, the Eleventh Circuit's "injustice" standard applied and not Calderon, which concerns habeas proceedings.

The test for injustice is best evaluated by determining if the panel committed plain error in issuing its opinion. See Emeary, 794 F.3d at 526 (recalling mandate because of appellate court's plain error). Hernandez's panel's opinion meets the plain error test as seen by:

- It's reliance on the §4B1.2 guideline commentary in affirming Hernandez's career offender designation; the panel therefore improperly used inchoate charges which cannot apply under the plain language of §4B1.2.
- The career offender designation causing Hernandez's sentence to be based on an incorrect sentencing guideline range.
- The sentencing range error not preserving "the fairness, integrity, or public perception of the proceedings." Rosales-Mireles v. United States, 138 S.Ct. 1897, 1910 (2018).
- The career offender enhancement affecting Hernandez's substantial rights to be sentenced under accurate guidelines as well as the fundamental fairness of the sentence, which lead to an increased criminal history category¹ and a sentencing starting point at least 25 months higher than necessary; or, a starting point where Hernandez's sentence ultimately ended up, after a downward variance.

¹ The government conceded that this was the affect of the career offender designation in their response brief. See Gov. Brf. at 37.

This court has repeatedly found that an incorrect application of the career offender enhancement is plain error. See, e.g.; United States v. Thompson, 839 Fed. Appx. 421, ___, 2021 U.S. App. LEXIS 215 at *5 (11th Cir. 2021); United States v. Cumming, 801 Fed. Appx. 740, 742 (11th Cir. 2020); United States v. Zuniga, 860 F.3d 276, 286-87 (11th Cir. 2017); see also, e.g., Rosales-Mireles, 138 S.Ct. at 1910. The panel committed a comparable plain error by affirming the incorrect designation. See Emeary, 794 F.3d at 526.

3. Shared Principles of Finality and Justice Support Recalling Mandate, Finality is Outweighed

It is typically understood that finality and justice are mutually exclusive and competing principles which must be weighed against each other when considering whether to recall a mandate. See Am. Iron & Steel Inst. v. EPA, 560 F.2d 589, 594-95 (3d Cir. 1977). Not so here.

"Finality is essential to both the retributive and the deterrent functions of criminal law." Calderon, 523 U.S. at 555. Retribution and deterrence are also part of a just sentence. Encompassed in 18 U.S.C. §3553(a) is a requirement for courts to "impose a sentence sufficient, but not greater than necessary" that factors in retribution ("just punishment") and deterrence. 18 U.S.C. §3553(a)(2)(A), (B).

Retribution and deterrence were not satisfied when Hernandez was incorrectly labeled a career offender. He is now serving a sentence greater than necessary by at least 25 months.

Aggravating this, defendants similarly situated as Hernandez, who raise the same issue on appeal of being incorrectly designated a career offender, will undoubtedly receive the benefit of Dupree's holding. The only difference between these defendants and Hernandez is when they submitted their argument.

Finality would dictate that although Hernandez timely raised this issue, he should not receive the benefit -- and despite his being correct by Supreme Court law at the time he argued it. This disparity counsels towards recalling the mandate here. See 16 Wright and Miller §3938, p. 880. And also outweighs concerns of finality, which "must yield, in appropriate circumstances, to the equities of the particular case in order that the judgment might reflect the true merits of the cause." Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 401 (5th Cir. 1981).

Finality also must yield to the remarkable circumstances regarding this proceeding. Unique to Hernandez's situation are that: (1) the claim Hernandez wishes to recall is one that was already and properly presented in this appeal that could now only be decided in Hernandez's favor; (2) which is regarding a change in jurisprudence rectifying an error made over 10 years prior to the appeal that was "incorrect at the time" (Dupree. No. 19-13776, Doc. 74-1 at 22 n.9 (citing United States v. Weir, 51 F.3d 690 (11th Cir. 1995))); (3) that readily demonstrates prejudice to Hernandez (a higher criminal history category, or a sentence at least 25 months higher than necessary as agreed on by the parties; (4) and which is a type of error that this court readily acknowledges is plain error. This is an extraordinary posture, and the confluence of these unique factors weighs towards this court correcting the injustice of the unnecessary enhancement.

C

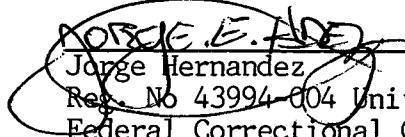
V. Conclusion

This Court cannot allow an unjust decision to stand. The panel in Hernandez's case permitted an injustice when it affirmed Hernandez's designation as a career offender, but it only did so because it did not have the order and reasoning of the en banc court. Recalling the mandate now can correct this

asymmetry.

This court should recall its mandate in this appeal, correct its order, vacate Hernandez's sentence, and remand the case to the district court with the instructions to resentence Hernandez without the career offender designation.

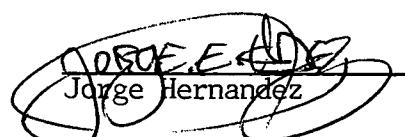
Respectfully,



Jorge Hernandez
Reg. No 43994-004 Unit B-3
Federal Correctional Complex
P.O. Box 1031 (Low Custody)
Coleman, FL 33521-1031

CERTIFICATE OF COMPLIANCE

This document was created on a SWINTEC 7000 typewriter using a Prestige PICA 10 printwheel.



CERTIFICATE OF SERVICE

This document was delivered in a properly addressed envelope, in which postage is being prepaid, to the prison mail authorities on February 17, 2023.

The original was sent to the United States Court of Appeals, Office of the Clerk at 56 Forsyth Street, N.W., Atlanta, Georgia 30303.

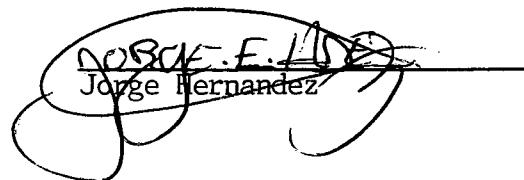
A copy of this document was sent to United States's attorney of record at 99 N.E. 4th Street, Miami, Florida 33132-2111.



Jorge Hernandez

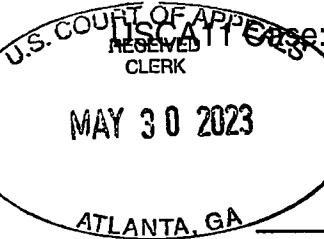
VERIFICATION

Under penalty of perjury as authorized by 28 U.S.C. §1746, I declare that the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.



A handwritten signature in black ink, appearing to read "JORGE F. H." followed by a surname that is partially obscured by a large, stylized, overlapping flourish. Below the signature, the name "Jorge Hernandez" is printed in a smaller, clean font.

APPENDIX D



No 16-17349-CC

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

United States of America

Appellee,

-vs-

Jorge Hernandez

Appellant,

PETITION FOR PANEL REHEARING

Jorge Hernandez respectfully requests rehearing on the panel's order denying his motion to recall the mandate based on the following violations of rules and law.

1. The panel issued a single sentence summary denial of Hernandez's motion with no reasoning as to why the motion was denied.
2. A court of review cannot adequately perform its appellate functions if the court below does not "address[] and respond[] to nonfrivolous arguments timely raised by the parties before it." *Golan v. Sada*, 142 S.Ct. 1880, 1993 (2022); see *Danley v. Allen*, 480 F.3d. 1090, 1091 (11th Cir. 2007)) "Many times, and in many contexts, this court has admonished district courts that their orders should contain sufficient explanations of their rulings so as to provide this Court with an opportunity to engage in meaningful appellate review.")
3. The panel's summary disposition made no mention if it regarded

Hernandez' arguments as frivolous or untimely.

4. Hernandez is entitled to seek Supreme Court certiorari in order to have this Court judgment reviewed, 28 U.S.C. § 1254(1); see also *Ward v. United States*, 486 F.2d. 305, 306 (5th Cir. 1973) ("Appellant is advised of his reviewed right to petition the Supreme Court for certiorari to review this Court's affirmance of his criminal appeal.")

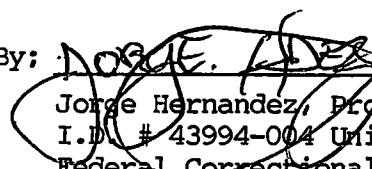
5. The panel's summary order has denied Hernandez the right to seek certiorari certiorari on the merits of his arguments in his motion to recall the mandate.

6. Hernandez is also entitled to seek panel rehearing on his motion, as here.

7. The panel's order has likewise prevented Hernandez from seeking rehearing on the merits of his arguments, because Hernandez cannot know on what legal or factual basis the panel has denied his motion.

8. The panel should recall their summary order and provide at least some reasoning as to why it denied Hernandez's motion, and permit Hernandez to seek to exercise certiorari or rehearing on this reasoning if he chooses.

Respectfully submitted this 15th day of may, 2023.

By: 
Jorge Hernandez, Proceeding Pro Se
I.D. # 43994-004 Unit B-3
Federal Correctional Complex - LOW
P.O. Box 1031
Coleman, Florida 33521-1031

CERTIFICATE OF COMPLIANCE

This document was prepared on a Swintec typewriter using a Pica 12 printwheel.

By: 
Jorge Hernandez

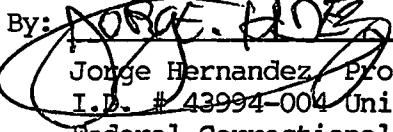
CERTIFICATE OF SERVICE

This document was delivered to the prison mailing authorities, in which postage is being pre-paid on May 15th, 2022.

The original was sent to the United States Court of Appeals for the Eleventh Circuit, Office of the Clerk at 56 Forsyth Street N.W., Atlanta, Georgia 30303.

A copy of this pleading was sent to the United States via its attorney of record at 99 N.E. 4th Street, Miami, Florida 33132

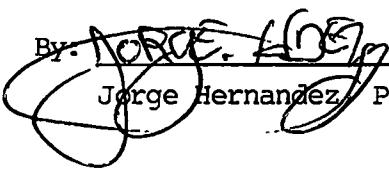
By:


Jorge Hernandez Proceeding Pro Se
I.D. # 43994-004 Unit B-3
Federal Correctional Complex - LOW
P.O. Box 1031
Coleman, Florida 33521-1031

VERIFICATION

Under the penalty of perjury authorized by 28 U.S.C. § 1746, I declare that the factual statements contained in this document are true and correct to the best of my knowledge.

By:


Jorge Hernandez Proceeding Pro Se



No. 16-17349-CC

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

United States of America,

Appellee,

-vs-

Jorge Hernandez

Appellant,

CERTIFICATE OF INTERESTED PERSONS

The following individuals have an interest in the outcome of this case:

Botero, Monique

Colan, Jonathan

Ferrer, Willfredo

Hernandez, Jorge

The Hon. Frederico A. Moreno, United States District Judge

Petruzzi, Paul

Smachelli, Emily

Tamen, Frank

Jorge Hernandez #43994-004
Federal Correctional Complex-17496
P.O. Box 1031 DULUTH, GA 30036-1031
Coleman, Florida 33521-1031

Document: 65 Date Filed: 05/25/2023 FL-335
SA/nd PETERSBURG FL
25 MAY 2023 PM 5 1



U.S. MARSHALS SERVICE
11th Circuit Court of Appeals (COA)

May 30 2023

CLEARED SECURITY

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
ATTN: CLERK OF THE COURT
56 FORSYTH STREET N.W.
ATLANTA, GEORGIA 30303

11th Circuit Court of Appeals (COA)

56 Forsyth Street N.W.
Atlanta, Georgia 30303

APPENDIX E

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
JORGE ENRIQUE HERNANDEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: **16-20109-CR-MORENO**
USM Number: **43994-004**

Counsel For Defendant: **Paul Petruzz**
Counsel For The United States: **Frank Tamen**
Court Reporter: **Gilda Pastor-Hernandez**

The defendant pleaded guilty to Count 5 of the Indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21 U.S.C. § 841(a)(1)	Possession with intent to distribute 50 grams or more of methamphetamine (a lesser included offense)	02/06/2015	5

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

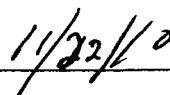
All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **11/17/2016**


Federico A. Moreno
United States District Judge

Date:


11/22/16

DEFENDANT: JORGE ENRIQUE HERNANDEZ
CASE NUMBER: 16-20109-CR-MORENO

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **210 MONTHS**.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL.



DEFENDANT: JORGE ENRIQUE HERNANDEZ
CASE NUMBER: 16-20109-CR-MORENO

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **LIFE**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.



DEFENDANT: JORGE ENRIQUE HERNANDEZ
CASE NUMBER: 16-20109-CR-MORENO

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

Mental Health Treatment



DEFENDANT: JORGE ENRIQUE HERNANDEZ
CASE NUMBER: 16-20109-CR-MORENO

SPECIAL CONDITIONS OF SUPERVISION

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.



DEFENDANT: JORGE ENRIQUE HERNANDEZ
CASE NUMBER: 16-20109-CR-MORENO

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.



DEFENDANT: JORGE ENRIQUE HERNANDEZ
CASE NUMBER: 16-20109-CR-MORENO

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

